

*** NOT FOR PUBLICATION ***

NO. 24830

IN THE SUPREME COURT OF THE STATE OF HAWAII

EUGENE L. LABADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 JUL 29 PM 12:44

FILED

BANKERS TRUST AAMES MT 2000-1, Plaintiff-Appellee

vs.

MANNY HERNANDEZ, Defendant-Appellant

and

BRIANNE VALENCIA, ASSOCIATION OF APARTMENT OWNERS OF 99-446A & 99-446B KEKOA PLACE, JOHN DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, DOE ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 01-1-0228)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Defendant-appellant Manny Hernandez (Hernandez), pro se, appeals from the January 7, 2002 judgment of the circuit court of the first circuit, the Honorable Karen N. Blondin presiding, entered pursuant to the order granting summary judgment in favor of plaintiff-appellee Bankers Trust Aames MT 2000-1 (Bankers Trust) with respect to all claims asserted by Bankers Trust in its complaint to foreclose on Hernandez's mortgage for property located at 99-446B Kekoa Place, in 'Aiea, Hawai'i [hereinafter, "the property"]. On appeal, Hernandez argues that (1) the complaint and summons to foreclose on his mortgage were not properly served, (2) the circuit court erred in granting summary judgment in favor of Bankers Trust because there exists genuine issues of material fact "controverting the title

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of [Bankers Trust] in and to the property," and (3) the circuit court abused its discretion in denying his motion to dismiss Bankers Trust's motion for summary judgment.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we initially note that Hernandez was properly served with the complaint and summons, inasmuch as (1) the "Return of Service" indicated that Civil Deputy/Police Officer Sandra K. S. Whang (Sheriff Whang) left the complaint and summons at the property with Tesa Fuimaono (Fuimaono) on January 28, 2001, at 6:15 p.m., and (2) Sheriff Whang's "Declaration" explained that (a) she appeared at the property, knocked on the front door, and introduced herself to Fuimaono, an adult woman between the age of 20-30 years, (b) Fuimaono informed her that Hernandez was not at home, but was expected home shortly, (c) she handed the complaint and summons to Fuimaono and instructed her to give them to Hernandez, and (d) she explained to Fuimaono that she was serving the complaint and summons upon Hernandez by serving her with the legal documents. See Hawai'i Rules of Civil Procedure Rule 4(d)(1)(A) (expressly providing that, if the person to be served with the complaint and summons cannot be found, personal service of process may be accomplished by "leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein"). With respect to Hernandez's points of error on appeal, we hold that: (1) the circuit court

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did not err in granting summary judgment in favor of Bankers Trust, inasmuch as the record establishes that (a) Hernandez entered into a loan agreement pursuant to the terms and conditions set forth in the promissory note and mortgage, (b) Hernandez failed to make scheduled monthly payments, and, thus, defaulted under the terms of the promissory note and mortgage, and (c) Bankers Trust fully complied with the notice provisions of the promissory note and mortgage by notifying Hernandez of its acceleration of the debt on September 4, 2000, and, therefore, viewing the evidence in the light most favorable to Hernandez, it cannot be said that there exists a genuine issue of material fact regarding Bankers Trust's request for foreclosure, see Hawai'i Cmty. Fed. Credit Union v. Keka, 94 Hawai'i 213, 11 P.3d 1 (2000); Bank of Honolulu, N.A. v. Anderson, 3 Haw. App. 545, 654 P.2d 1370 (1982); and (2) the circuit court did not abuse its discretion in denying Hernandez's motions to dismiss. Therefore,



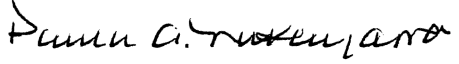
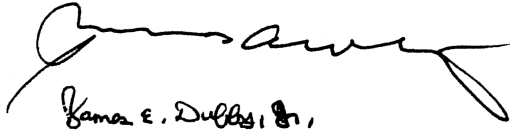
IT IS HEREBY ORDERED that the circuit court's January 7, 2002 judgment, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, July 29, 2005.

On the briefs:

Manny Hernandez,
defendant-appellant, pro se

Steven T. Iwamura and Mary Martin,
Attorneys for the plaintiff-appellee
Bankers Trust Aames MT 2000-1





Kama E. Duffly, Sr.